

2018 WL 2085810 (F.C.C.)

Federal Communications Commission (F.C.C.)
Public Notice

MEDIA BUREAU ANNOUNCES FILING OF PETITION FOR DECLARATORY RULING BY HEMISPHERE
MEDIA GROUP, INC. AND PERMIT-BUT-DISCLOSE EX PARTE STATUS FOR THE PROCEEDING

MB Docket No. 18-134

DA 18-457

Released: May 4, 2018

Comments Due: June 4, 2018

Replies Due: June 19, 2018

*1 By: Chief, Media Bureau

Hemisphere Media Group, Inc. (HMTV) has filed a remedial petition for declaratory ruling¹ (2018 Petition) asking the Commission to find it would be in the public interest to modify its 2017 Declaratory Ruling² which permits HMTV to accept foreign investment in excess of the 25 percent benchmark set forth in Section 310(b)(4) of the Communications Act of 1934, as amended (the Act).³ HMTV seeks to substitute certain entities in the ownership chain of its specifically approved foreign investor.⁴

On January 18, 2017, the Media Bureau, on delegated authority, granted a petition for declaratory ruling filed by HMTV (2016 Petition) permitting foreign investors to own up to 49.99 percent in the aggregate of both its and equity and voting interests.⁵ The *2017 Declaratory Ruling* also granted specific approval allowing Cinema Aeropuerto, S.A. de C.V. (Cinema Aeropuerto), a Mexican corporation, and a series of subsidiary foreign entities and associated foreign entities and individuals to hold up to 49.99 percent of the voting interests and 49.99 percent of the equity of HMTV.⁶ As explained in the *2017 Declaratory Ruling*, Cinema Aeropuerto's ultimate parent was HSBC 61549, a trust organized under Mexican law for the benefit of the descendants of Mr. José Joaquín Vargas Gómez.⁷ The sole trustee of HSBC 61549 was HSBC México, S.A., an indirect wholly-owned subsidiary of HSBC Holdings plc, which is organized under the laws of the United Kingdom.⁸ The shares of the trust were voted at the direction of a trust committee comprised solely of children of Mr. Gómez.⁹

HMTV states that the 2018 Petition was prompted by Cinema Aeropuerto's March 23, 2018 amendment to the Schedule 13 D on file with the Securities and Exchange Commission with respect to its investment in HMTV.¹⁰ Cinema Aeropuerto reported that HSBC 61549 had been replaced with Santander Trust Agreement Number 2003914 (the Trust), with Banco Santander (Mexico) as the Trustee.¹¹ HMTV states that it confirmed with Cinema Aeropuerto and its counsel that there were no other changes to the trust structure other than the replacement of HSBC Mexico by Banco Santander (Mexico).¹² The new trustee continues to vote the shares of Grupo MSV at the direction of a trust committee, the members of which remain unchanged.¹³

*2 HMTV requests specific approval for the following foreign entities to hold up to a 49.9 percent voting and equity interest in HMTV indirectly through Cinema Aeropuerto: Santander Trust Agreement Number 2003914; Banco Santander (México), S.A.; Grupo Financiero Santander México, S.A. de C.V.; and Banco Santander, S.A.

The Petition has been found, on initial review, to be acceptable for filing. The Commission may require HMTV to submit any additional documents or statements of fact that in its judgment may be necessary. The Commission also reserves the right to return the Petition if, on further examination, it is determined to be defective and not in conformance with its rules and policies.

EX PARTE STATUS OF THIS PROCEEDING

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.¹⁴ Pursuant to 47 C.F.R. § 1.1200(a), the Commission may adopt modified *ex parte* procedures in situations where doing so would serve the public interest. We announce that this procedure will be governed by the permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under Section 1.1206 of Commission's Rules.¹⁵

Permit-but-disclose *ex parte* procedures permit interested parties to make *ex parte* presentations to the Commissioners and Commission employees and require that these presentations be disclosed in the record of the relevant proceeding. Persons making a written *ex parte* presentation to the Commissioners or Commission employees must file the written presentation with the Commission's Secretary no later than two business day after the presentation.¹⁶ Persons making oral *ex parte* presentations must file a summary of the presentation no later than the next business day after the presentation.¹⁷ All *ex parte* filings must be clearly labeled as such and must reference MB Docket No. 18-134. Parties are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.¹⁸ More than a one or two sentence description of the views and arguments presented is generally required.¹⁹ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

GENERAL INFORMATION

***3** The Petition and all further filings will be available in the Commissions Electronic Comment Filing System (“ECFS”) under Docket 18-134. All pleadings, comments and other filings are to be made in ECFS in Docket 18-134. Persons and entities that file comments become parties to the proceeding. They may participate fully in the proceeding, including seeking access to any confidential and/or highly confidential information that may be filed under a protective order.

To allow the Commission to consider fully all substantive issues in as timely and efficient a manner as possible, commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies. A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

All filings concerning matters referenced in this Public Notice should refer to MB Docket No. 18-134.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, [47 CFR §§ 1.415, 1.419](#), interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

- Electronic filers shall submit an electronic version of their filing to David Roberts, Attorney Advisor, Video Division, Media Bureau at david.roberts@fcc.gov and one copy to or Dana Leavitt at dana.leavitt@fcc.gov. Identify the submission with the Docket Number in the subject line.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

***4** · Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

- Paper filers shall file serve one copy of their filing on David Roberts, Attorney Advisor, Federal Communications, Media Bureau, Video Division, 445 12th St. SW, Room 2-A771, Washington, D.C. 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For further information, contact David Roberts at (202) 418-1618 or Dana Leavitt at (202) 418-1317. For Press inquiries, contact Janice Wise at (202) 418-8165.

Footnotes

1 [47 CFR § 1.5004\(f\)\(3\)](#).

2 *Hemisphere Media Group, Inc., Declaratory Ruling*, 32 FCC Rcd 718 (2017) (2017 Declaratory Ruling).

3 2018 Petition at 1. There are no applications for assignment of license or transfer of control associated with this petition. HMTV is a public traded Delaware corporation headquartered in Florida. 2016 Petition at 1.

4 *Id.*
5 2017 Declaratory Ruling, [32 FCC Rcd at 725](#). The 2018 Petition does not seek a change in the overall level of foreign investment
in HMTV.
6 *Id.*
7 *Id.* at 719.
8 *Id.*
9 *Id.*
10 2018 Petition at 2.
11 *Id.*
12 *Id.*
13 *Id.*
14 47 C.F.R. §§ 1.1200 *et seq.*
15 *See* 47 C.F.R. § 1.1206.
16 47 C.F.R. § 1.1206(b)(1).
17 47 C.F.R. § 1.1206(b)(2).
18 47 C.F.R. § 1.1206(b)(1).
19 *Id.*

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